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TO: Maryland Justice Reinvestment Coordinating Council

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SUBJECT: Victim/Survivor/Advocate Roundtables Summary Report and Priorities

Introduction

Crime victims, survivors and the victim advocates who serve them are important stakeholders in the work of the Maryland Justice Reinvestment Coordinating Council. Two Roundtable discussions were held in September and October 2015, respectively, to provide survivors and victim advocates with an overview of the Council's work to date and to seek their input in establishing priorities for crime victims and advocates for review by the Council.

There were 10 victims/survivors at the Roundtable held on September 29 at the Maryland Crime Victims' Resource Center (MCVRC), and 16 survivors and victim advocates – representing both system- and community-based victim assistance organizations and agencies – at the Roundtable held on October 9 at the Anne Arundel County Police Department. A list of Roundtable participants is included at the end of this memorandum.

Welcome and Overview

At the Victim/Survivor Roundtable, MCVRC Founder and Board President Roberta Roper expressed her appreciation to the Council for its proactive outreach to survivors, noting that “you can't have effective justice reform without victims and survivors at the table.” Victims' rights are fundamental under the State Constitution. As such, victims' interests need to be considered and accorded in the justice reinvestment process. The focus of the justice reinvestment process is to protect public safety, hold offenders accountable, and control corrections spending. Any benefits and reinvestment should be directed toward public safety and recidivism reduction strategies.

At the Victim Advocate Roundtable, Council Chair Christopher Shank explained that this was the third stakeholder meeting and emphasized the importance and value of hearing from those who are affected by justice reforms. He described Maryland's justice reinvestment initiative as a “data-driven, holistic approach” with an ultimate goal of less crime, reduced recidivism, and fewer victims, emphasizing that “victims are at the absolute center of this process.” He further indicated that the approach taken by the State was to primarily focus on non-violent offenders and not on offenders convicted of violent crime.

At both Roundtables, Connie Utada of The Pew Charitable Trusts provided an overview of the Council's work and initial findings to date. In Maryland, prison admissions are down slightly over the last decade (5 percent), but the state still sends many nonviolent offenders to prison, making up 58 percent of prison admissions. Additionally, almost 60 percent of prison admissions are individuals who have failed on probation or other post-prison supervision. Many of these failures, however, are due to technical violations, such as missing an appointment or failing a drug test, rather than for a new criminal conviction. These admission trends come at a time when research demonstrates that, for lower-level offenders like drug offenders and supervision violators, incarceration can actually increase recidivism when compared with noncustodial sanctions. Further, offenders in Maryland are spending 23 percent longer in prison than they were a decade ago, for an average increase of six months. This increase in length of stay has occurred in spite of a consensus in criminological research that tacking additional months and years onto prison stays yields diminishing public safety returns.¹

The roundtables also heard about other justice reinvestment states that have engaged in similar processes to focus prison beds on serious and violent offenders while reducing recidivism and controlling corrections spending. Through the justice reinvestment process, many states have redirected savings to improve victim services, develop information and notification systems for victims, and further aid programs that reduce recidivism and cut crime.

The extensive work of the Council has been documented on the website of the Governor's Office of Crime Control and Prevention at <http://goccp.maryland.gov/jrcc/index.php>.

Victim/Survivor/Advocate Roundtable Priorities

Roundtable participants identified six priorities to improve victims' rights and services, training, and systems.

1. **Restitution.** The top priority identified by both Roundtables is *improving restitution management statewide*. Effective restitution systems are comprehensive and need to communicate across agencies while bearing the responsibility of managing and collecting restitution. Further, victim advocates, prosecutors and the judiciary must have training to support the request and ordering of restitution. Finally, effective restitution management in Maryland would require an increase in staff to support this effort.
2. **Victim Notification.** Maryland should adhere to the National SAVIN Guidelines and Standards developed by the U.S. Department of Justice, which include centralized offender registration, contemporary data entry from justice agencies, and the capacity for timely

¹ A summary of the presentation has been emailed to all Roundtable participants.

notification across the criminal justice spectrum from arrest through parole and reentry, including post-sentencing hearings and changes to offender sentences.

3. Reinvestment Opportunities.

- The amount of funds available to victims and survivors from the Criminal Injuries Compensation Board (CICB) should be increased by raising the amounts of fines and fees that judges can order to be paid to the CICB. One potential investment opportunity would be to increase the state's annual appropriation to the CICB and emulate jurisdictions that successfully collect fines and fees from offenders as a means to increase the number of victims whom the CISB serves. The CISB should also simplify its appeal process to reduce confusion faced by victims.
- Law enforcement-based victim advocates are needed in jurisdictions that currently lack them.
- Sufficient pro bono legal assistance should be expanded for all types of victims so that victims and survivors can exercise their rights under the law and have reasonable access to services.
- The Victim and Witness Protection and Relocation Fund could be expanded to facilitate assisting victims beyond the current implementation of the Fund.

4. Training. Criminal justice stakeholders, including law enforcement, state's attorneys and judges, need greater awareness of critical risk and protection factors related to victim safety, including custody orders and conditions of supervision, as well as training to increase consistency in how victim impact statements are obtained and used by courts across Maryland. This could be accomplished by the following:

- Providing regularly scheduled training for criminal justice professionals to increase both victim sensitivity and a willingness to enhance the fair treatment of victims and survivors in Maryland; and
- Informing victims of defendants' rights to post-sentencing relief at the time of sentencing.

5. Data Collection. It is critical to ensure that data pertaining to victims' rights and services is collected and analyzed to measure how effectively and consistently victims' rights are being enforced and services are being requested and/or provided.

6. Second Degree Murder. Some members felt that judges should have greater discretion to sentence those convicted of homicide offenses to appropriate sanctions and the state should consider whether the current penalty for second degree murder is severe enough.

Roundtable Discussions

Victims' Rights

Victim Restitution

Both Roundtables spent a significant amount of time discussing the challenges to effective restitution management in Maryland. Restitution is critical to restorative justice, as the payment of restitution holds the offender accountable for the financial harm caused to the victim. As one survivor noted, "restitution is the victim's right in Maryland that is least applied." Three "central issues" regarding restitution in Maryland were framed:

1. Do victims know they can receive restitution, and are State's Attorneys requesting it and/or facilitating victim requests?

For victims in Maryland, restitution is an important tenet of offender accountability. One survivor noted that many victims are "unclear about what restitution is and what it means."

Moreover, there is not a consistent practice in handling restitution request; some state's attorneys do not request restitution, some use restitution as a "bargaining chip" for plea agreements, while others "try to get the money up front."

State's Attorneys' Victim/Witness staff play an essential role in helping victims collect bills for the purposes of documenting pecuniary losses and communicating with the State's Attorney who requests a specific restitution amount from the court. To ensure offender accountability, probation and parole agents should have the ability to hold offenders in violation of their supervision terms where no good faith efforts have been made to pay restitution.

2. Do judges consistently order restitution when it is requested, and enforce the collection of restitution when it is not paid?

Judges should understand the significant financial losses that many victims endure as a result of crime, and which can be addressed through restitution orders. Determination of restitution orders should provide as much consideration to a *victim's ability to recoup their losses* as is given to a *convicted offender's ability to pay*. Roundtable participants stated that probation officers don't research an offender's ability to pay, and an offender's failure to make restitution payments often is not treated as a violation of conditions of probation. Offenders may receive manicures, have cell phones, cable or satellite TV and multiple cars, all while failing to make restitution payments, and can do so without consequences.

Judges would benefit from training on ordering restitution to provide justice to victims. A clear set of guidelines for judges about when and how to order restitution and what to order is needed in Maryland.

3. Are there more effective ways to manage the ordering, collecting and disbursing of restitution?

There is general consensus that “there is no good system for collecting or managing restitution.” A comprehensive statewide system to measure and maintain restitution data is needed to be able to accurately document restitution management in Maryland. Hawaii’s new restitution system, which is partially funded by that state’s justice reinvestment savings, is a sound example of how a restitution system can be run effectively and a good model for replication in other states, including Maryland.² It features the following: 1) a collaborative and comprehensive approach that increases the amount of restitution payable by incarcerated inmates from 10 percent of inmate wages to 25 percent of all funds deposited into an inmate’s account; 2) creates a comprehensive statewide computer database across multiple agencies to track restitution orders, collections and payments to victims; increases the frequency of restitution disbursements to crime victims; and 3) creates 22 new victim advocate positions to assist victims with restitution, notification and safety planning (15 county-based victim advocates, two in the corrections-based victim services program, and five within the Victim Compensation Commission).

Recommendations to address restitution challenges in Maryland:

- Consolidate the collection of restitution into one entity whose employees will have accountability for collecting funds.
- Maintain data regarding restitution collection and the development of evidence-based practices for restitution collection.
- Emulate Hawaii’s JRI system regarding restitution.
- Utilize technology and collaboration to facilitate the collection of restitution.
- Utilize earnings withholding orders to increase the collection of restitution.
- Allow for a reasonable percentage of funds deposited in inmate trust accounts to fulfill restitution obligations (see Hawaii’s initiative, above).
- Expand the categories of what can be requested for restitution orders (i.e. future earnings of the convicted offender and future pecuniary losses of the victim).
- Emulate the evidence-based practices for child support collection.
- Make restitution mandatory to eliminate discretion in restitution decision-making.
- Explore asset forfeitures and other options to help get restitution paid up front.

² Hawaii’s victim services have presented on their restitution system at multiple national conferences and are working on a plan to provide technical assistance to other states once the system is finalized.

Maryland's Justice Reinvestment Initiative allows the State to make significant reforms to its criminal justice system. This is a good opportunity to address restitution collection and overall restitution management. Maryland should follow the Hawaii example and utilize justice reinvestment dollars to establish a process that will hold offenders accountable and provide victims with an effective restitution system.

Victim restitution should be ordered in all cases where victims endure pecuniary losses as a result of the crime committed against them, and should be requested as a condition of all plea agreements involving pecuniary losses to the victim. Probation officials and victim advocates should coordinate closely to locate victims for the purpose of providing them with court-ordered restitution payments.

Victim Notification

Roundtable participants stated that "Maryland needs to make effective victim notification a high priority." Both roundtables raised concerns over the fact that victims have to re-register for the Victim Information and Notification (VINE) system that provides victims with information about the status of their case and alleged or convicted offender at each stage of the criminal proceeding (pretrial, release, transfer from local to state facility, etc.). If victims are unaware of this requirement and fail to re-register, they will not be notified of the status of their case and/or offender. In addition, Roundtable participants concurred that the Department of Corrections can enter offender case/location data into the VINE system "in a more timely manner," and recommended that the VINE system include notification of sentence reconsideration and other post-sentencing hearings to registrants.

Failure to provide effective notice to victims re-victimizes a victim. For victims to adequately assert their rights to be informed, present, and heard, they need to receive timely notice [of offender release]. In fact, in certain cases a lack of notice may place the victim in harm of death or serious injury. Justice demands that victims be accorded proper notice to prevent such occurrences.

Roundtable participants believed that improving victim notification was potentially "low hanging fruit" that could be achieved without substantial funding. Participants mentioned that by implementing the national Statewide Automated Victim Information and Notification (SAVIN) standards developed by the U.S. Department of Justice (http://it.ojp.gov/documents/ijis_savin_guidelines_standards.pdf), Maryland could improve its system by utilizing existing technology without having to reinvent the wheel.

1. There was consensus from both Roundtables that Maryland should adhere to the National SAVIN Guidelines and Standards, which include centralized registration, timely data entry from justice agencies, and the capacity for notification across the criminal justice spectrum from arrest through parole and reentry.
2. Victim Information, Notification and Participation during Pretrial Proceedings.

While victims have legal standing in Maryland pretrial proceedings, the issue of “timing” with cases moving very quickly often precludes effective victim participation in accordance with law. Victims need “improved communications,” including information and notification about pretrial proceedings or, as one participant noted, “law enforcement just needs to call people back.” Timely advance notice to victims is a key to improvement.

Reinvestment Opportunities

1. Victim Compensation

Survivors described victim compensation as an “intimidating process” that can be confusing to victims, especially in understanding how to appeal a denial of a claim. Simplifying the appeal process would reduce the confusion faced by victims. There is also consensus that the current cap on compensation claims is not enough to remunerate victims for their financial losses resulting from the crime. Suggestions for increasing the amount of funds available through the Criminal Injuries Compensation Board (CICB) include raising the amounts of fines and fees that judges can order to be paid to the CICB and increasing the state’s annual appropriation to solve the shortfall of funding.

Roundtable participants shared a concern that determinations that victims contributed to the crime is not always properly decided and that there is no effective judicial review in these cases. A process to assess the legitimacy of victims and the extent that certain “victims” may have contributed to the crime, should be established.

2. Law Enforcement and Victim Assistance, Including in Unsolved Cases

Law enforcement-based victim advocates are needed in the various Maryland jurisdictions that currently lack them. In addition, law enforcement officials need a better understanding of the important role that community-based victim assistance programs play in assisting victims in the immediate- and short-term phases of their cases so law enforcement can make appropriate referrals. Resources to include assistance in solving cold cases would help victims and their survivors obtain justice.

3. Access to Justice for Victims

In Maryland, there are “overwhelming requests for counsel” from crime victims and survivors. While several organizations provide legal aid to victims – including the Sexual Assault Legal Institute, Maryland Crime Victims’ Resource Center, House of Ruth, Women’s Law Center, and Life Crisis Center – victims’ needs are much greater than the current capacity. Victims’ legal needs include (but are not limited to) assistance with protective orders, custody orders, estate planning, victims’ rights, financial needs including restitution and criminal injuries compensation, relocation, privacy, and post-

sentencing matters. Victims do not have the legal ability to obtain the access to justice that they need. As such, sufficient pro bono legal assistance should be expanded for all types of victims so that victims and survivors can exercise their rights under the law and have reasonable access to services.

4. Victim and Witness Protection and Relocation Fund

Barriers to transportation for victims must be addressed, as adequate transportation is important to help victims and survivors participate in justice processes. One way to address this is through expanding the Victim and Witness Protection and Relocation Fund.

Training

Regularly scheduled training for criminal justice professionals – including law enforcement, state’s attorneys and judges – is needed to increase both victim sensitivity and a willingness to enhance the fair treatment of victims and survivors in Maryland. As one survivor noted, “words matter” in how justice officials talk to and about victims and survivors.

Training topics recommended by both Roundtables include: 1) victim sensitivity; 2) victims’ rights; 3) victim safety and risk factors; 4) trauma responses; and 5) the roles and responsibilities of Maryland’s system- and community-based victim advocates in collaborating with justice agencies and officials to serve victims of crime.

Without proper training of justice officials, victims can and will be further injured. Stakeholders need to be consulted so that laws are followed and services needed by victims and survivors are provided. Other training topics include:

➤ Victim Safety and Protection

Judges need greater awareness of critical risk and protection factors related to victim safety, including custody orders and conditions of supervision. Victims need to be able to request no contact when offenders are released and they must be informed when offenders are released in order to have appropriate safety planning. Improvements to VINE can help. While separate and both important, safety and privacy both contribute to the reasonable protection of victims in Maryland.

➤ Victim Impact Statements (VIS)

Concerns were expressed that individual judges interpret victims’ rights to submit impact statements “very differently,” resulting in a lack of consistency in how VIS are sought and considered by Maryland courts. Some victims and survivors felt that their VIS had little or no impact on the sentence and was heard only after the sentence was already determined.

➤ **Post-Sentencing Hearings and Victims' Rights**

At the Victim/Survivor Roundtable, there was strong consensus that there is “no oversight” regarding the court reconsideration process and it is “not managed well.” Participants expressed the need for legal counsel for post-sentencing hearings, as well as some limitations to sentence reconsiderations and mechanisms for judicial release.

The second Roundtable expressed a “need to create more transparency of reconsideration hearings.” It was suggested that at the time of sentencing, judges should inform victims of the range of the penalty and any post-sentencing relief. Victims should also receive timely notification of any post-sentencing hearings or any changes to their offenders' cases.

Data Collection and Analysis

As with restitution, there is a lack of data regarding the implementation of victims' rights and provision of quality services to victims and survivors. It is critical to ensure that data is collected and analyzed to measure whether victims receive their rights in accordance with Maryland law, i.e., the number of victims who register for notification services; the number of protective orders that are sought by and provided to victims and survivors; and the number of survivors who seek legal assistance services. Statistical analysis requires data. It is said that what is counted is what gets done. It is equally important to ensure that efforts to improve the system, such as providing victim-related trainings, are built on evidence-based practices. Knowing what does and does not work is critical to achieving genuine improvements, and collecting and tracking reliable data helps establish justice systems that are accountable and transparent.

Current Sentencing Laws

The Victim/Survivor Roundtable supported increased penalties for homicide offenses and specifically for second degree murder. For first degree murder, the maximum penalty is life without parole. For second degree murder, the maximum penalty is 30 years, and for manslaughter, the maximum penalty is 10 years. Increasing the penalty of second degree murder to 40 years, for example, would require the defendant to serve at least 20 years before being eligible for parole. Judges should have discretion to sentence for longer periods of time.

Participants in the Victim/Survivor Roundtable (September 29, 2015)

Donna Bocus
Helen Fiori
Cari Freeman
Frank Patten
Margery Patten
Catherine Riley
Roberta Roper
Gayle Seaton
Michael Seaton
Oliver Smith

Observers

Russell Butler, Maryland Crime Victims' Resource Center
Cara Sullivan, GOCCP

Participants in the Victim/Survivor/Victim Advocate Roundtable (October 9, 2015)

Scott Beard, Criminal Injuries Compensation Board
Barbara Bond, Office of the Attorney General
Wayne Brock, Victim/Survivor
Russell Butler, Maryland Crime Victims' Resource Center
Dee Gardner, Roberta's House
Richard Hoffman, GOCCP Victims' Rights Compliance
Lisae C. Jordan, MCASA/MCA
Steve Kelly, Maryland Board of Victim Services
Adam Lippe, Prosecutor
Margery Patten, Victim/Survivor
Jill Ritter, Washington County SAO
Roberta Roper, Maryland Crime Victims' Resource Center
Christopher Shank, GOCCP and Chair, Maryland Justice Reinvestment Coordinating Council
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